

## **Memorandum of Agreement**

### **Between the Public Buildings Reform Board and the U.S. General Services Administration Implementation of Disposal Recommendations in accordance with the Federal Assets Sale and Transfer Act**

#### **I. PURPOSE**

This Memorandum of Agreement (MOA) constitutes an agreement between the Public Buildings Reform Board (PBRB) and the U.S. General Services Administration (GSA) (jointly the Parties) regarding GSA's implementation of the disposal recommendations made by PBRB and approved by the Director, Office of Management and Budget (OMB). This MOA further clarifies and defines the relationship between the Parties, in general, and further delineates their roles, responsibilities and funding arrangements during the implementation phase. The Parties agree that early and continual engagement on strategic decisions and agreement on GSA's implementation of the approved recommendations will lead to successful projects as described in the purpose and intent of the Federal Assets Sale and Transfer Act (FASTA), P.L. 114-287, as amended.

#### **II. AUTHORITIES**

##### **A. PBRB**

In accordance with FASTA, PBRB was created as an independent board for the Federal government to reduce Federal real estate costs by:

1. consolidating the footprint of Federal buildings and facilities;
2. maximizing the utilization rate of Federal buildings and facilities;
3. reducing the reliance on leased space;
4. selling or redeveloping high value assets that are underutilized to obtain the highest and best value for the taxpayer and maximize the return to the taxpayer;
5. reducing the operating and maintenance costs of Federal civilian real properties;
6. reducing redundancy, overlap, and costs associated with field offices;
7. creating incentives for Federal agencies to achieve greater efficiency in their inventories of civilian real property;

8. facilitating and expediting the sale or disposal of unneeded Federal civilian real properties;
9. improving the efficiency of real property transfers for the provision of services to the homeless; and
10. assisting Federal agencies in achieving the Government's sustainability goals by reducing excess space, inventory, and energy consumption, as well as by leveraging new technologies.

#### **B. GSA**

As a general matter, GSA is authorized to provide a wide-range of services to other Federal agencies (including PBRB) under numerous statutory authorities, including but not limited to 40 U.S.C. §§ 501(b)(1)(A), 541 and 592. In addition, FASTA provides GSA with specific authority to, among others, perform necessary and proper actions to implement the recommendations made by PBRB. In the event that FASTA does not provide sufficient authority for GSA to implement an Approved Recommendation, GSA will, to the extent permitted under applicable law, rely on its other statutory authorities, in full or in part.

### **III. FUNDING**

#### **B. THE ASSETS PROCEEDS AND SPACE MANAGEMENT FUND**

The Parties agree that the Assets Proceeds and Space Management Fund (APSMF) will be used in the most cost effective, efficient manner possible to effectuate the intent of Congress as expressed through FASTA. “Amounts in the Fund shall be used solely for the purposes of carrying out actions pursuant to the Board recommendations approved under section 13.” (FASTA Section 16(b)(2)). The Parties agree that the APSMF may be used to pay for or otherwise reimburse GSA for any and all direct costs (except salaries and travel for the High Value Assets) associated with implementing the Approved Recommendations for the sale of the properties. To the extent implementing the Approved Recommendations creates increased indirect expenses for GSA, GSA may pursue reimbursement from the APSMF for such expenses, including but not limited to expenses of the GSA Working Capital Fund. While FASTA, by statute, places the APSMF under the custody and control of the Administrator, the

Parties agree and recognize that close coordination regarding the APSMF will be required for GSA to implement the Approved Recommendations. Accordingly, the Parties agree as follows:

- The GSA Office of Chief Financial Officer (OCFO) shall appoint an individual to serve as the single point of contact regarding the APSMF.
- The OCFO agrees to consult with PBRB prior to: (i) establishing internal funds control processes regarding the use of the APSMF; (ii) developing procedures for remitting amounts received from the sale of properties to the APSMF (FASTA, Section 16(b)); and (iii) developing closeout procedures for the APSMF, including any applicable de-obligation procedures.
- GSA will coordinate with OMB on the movement of APSMF funds to impacted landholding agencies to implement Approved Recommendations
- GSA agrees to share any and all financial information with PBRB regarding the use of the APSMF including but not limited to, look ahead schedules; yearly/monthly budget forecasts; actual and projected obligations; actual and projected expenses; and such reasonable information as requested by PBRB.
- GSA will make all final decisions on the use and expenditures of funds from the APSMF, including the necessity of acquiring specific goods and services. That being stated, GSA agrees not to obligate funds from the APSMF to implement an Approved Recommendation until the earlier of (x) an agreed upon Project Plan for a particular transaction or (y) PBRB requests an obligation in writing.
- Notwithstanding the above, the parties agree that PBRB, in partnership with GSA, will have the lead on all funding recommendations regarding commitments to agencies to fund projects out of the APSMF in Rounds 1 & 2.
- GSA agrees not to expend or otherwise make use of any funds in the APSMF upon written disagreement by the PBRB. The GSA OCFO, or his/her representative, shall initially resolve any such disagreement with the final decision, if requested by PBRB, being vested with the Administrator.

#### **IV. ROLES AND RESPONSIBILITIES**

##### **A. IN GENERAL**

The Parties acknowledge that successful execution of the FASTA program will require close coordination and cooperation to maximize sale proceeds. To that end, Board staff and GSA shall meet on a weekly basis. Board members also shall participate in periodic calls or meetings with GSA to the extent necessary and practical, and subject to the availability of the Parties. The Parties acknowledge a stated purpose of FASTA is to dispose of Federal real property in such a manner as to achieve “the highest and best value for the taxpayer, and maximize return to the taxpayer” by “facilitating and expediting the sale or disposal of unneeded Federal civilian real properties.” Therefore, the Parties agree to implement the Approved Recommendations in accordance with FASTA and direction from OMB in its January 24, 2020 letter of approval.

The Parties envision using a variety of methods to assure that, to the maximum extent practicable, disposals maximize value to the Federal Government. To that end, GSA and the PBRB agree to the following general approach to sales:

- GSA will brand all HVA as 'PBRB projects'. Written communications with third parties, and specifically with the private sector, will include the PBRB Logo. This applies particularly to Scopes of Work, Statements of Work, Requests for Proposals, Requests for Information, Requests for Quotations, Contract Opportunities (Successor to FedBizOpps) announcements, any publications on GSA's website, Auction announcements, and the like.
- Consistent with FASTA Sections 14(a)(2) and 14(c)(1)(B), GSA will, to the maximum extent practical, adhere to the sales recommendations included in the PBRB recommendations submitted to OMB on December 27, 2019 and specifically approved by OMB on January 24, 2020.
- GSA and PBRB jointly will develop and maintain project schedules and critical paths for each sale; and, if a schedule slips, GSA with PBRB will take all necessary and immediate steps to get the project back on schedule.
- This MOA is intended to guide the PBRB - GSA relationship for the duration of the Board's existence. However, many of the current roles and responsibilities are directed

towards sales of the High Value Assets. Should amendments be necessary to reflect projects or activities related to future rounds under FASTA, the parties agree to work together to develop those and amend this document.

- GSA intends to utilize Advisory and Brokerage Services for disposition of all of the High Value Assets (HVA). Brokers' tasks may include the following:
  - Recommend preferred sale method and act as "face of sale"
  - Lead point of contact for sales inquiries
  - Develop branding to include PBRB logo
  - Lead Marketing Campaign
    - Digital and print ad campaigns and sign placement
    - Dedicated website with relevant due diligence materials and ability to track user traffic.
    - Property photos and virtual tours
    - Lead/Coordinate open houses
    - Lead/Coordinate individual site inspections/tours
    - Lead on coordinating Industry Day events
  - Attendee outreach, meeting logistics, coordination of materials
  - Assist in developing deal documents
  - Provide feedback from market interactions
  - Recommend market offering type (as-is or offer with contingencies)
  - Recommend listing price
  - Recommend sale parameters/conditions/deal structure
  - Solicit, evaluate, rank and provide all offers to GSA
- GSA will contract for an independent fair market value appraisal based on highest and best use for each HVA.
- For disposal actions, GSA will take the lead in satisfying statutory requirements related to regulatory closure, with contract support as required. For example: NEPA, CERCLA, RCRA, NHPA and others as appropriate.
- Brokers will evaluate all offers, and provide a ranking by best value. GSA, with PBRB input, will make the final decision on offer, evaluation, acceptance and conveyance of title.

**B. PBRB**

- Provide overall leadership on identifying candidate assets and consulting on GSA recommendations.
- In conjunction with GSA's project team, coordinate communication efforts with key Federal and non-Federal stakeholders including media and elected officials.
- Identify key personnel for various decision points including contracting, stakeholder outreach, site inspections, and administrative activities.
- Review and consult on all Project Plans prepared by GSA and/or its advisors, brokers, and other contractors.
- Provide input to GSA on, among others, the use of funds in the APSMF; the need for contract services; and, other activities associated with implementing the Approved Recommendations.

**C. GSA**

- Identify single RPUD points of contact (POC) for each property to be disposed, including key personnel and project manager.
- Ensure that the RPUD POCs have authority and/or the ability to direct appropriate team members (within RPUD or from elsewhere in GSA) for all subsidiary projects related to a PBRB disposition, including but not limited to leasing, move and replication activities, prospectus approvals, funding transfers, and legal reviews.
- Provide regular status updates (e.g. Dashboards, etc.) to PBRB and partner with PBRB to provide quarterly status updates to OMB.
- Provide quarterly updates on the status of all funding associated with implementing the Approved Recommendations.
- Review all reports of excess' due diligence materials provided by landholding agencies in accordance with FASTA Section 12(b)(5).
- Initiate sales of Approved Recommendations within 120 days of ROE acceptance per FASTA Section 12(b)(6)(A).
- Prioritize and expedite the acquisition of Advisory and Brokerage services.
- Assist PBRB, as needed, with stakeholder briefings and communications:

- For Approved Recommendations which are not afforded an exemption from HUD suitability screening, coordinate with HUD to screen for McKinney Vento Homeless Assistance.
- For properties identified for transfer in accordance with FASTA Section 14(f)(3)(public park or recreation areas), coordinate with OMB and other stakeholders, as applicable.
- Maximize, and make use of, all available services and expertise within GSA to implement the Approved Recommendations. For example, for Approved Recommendations that may consist of non-sale transactions to improve overall space utilization (e.g., consolidation, colocation, realignment, etc.), GSA may need to rely on business lines and subject matter experts across the Public Buildings Service to assist with those transactions. The Parties recognize that separate agreements with and funding for these business lines may be required, as applicable (see above, Section III, Funding).
- Take such necessary and proper actions as required to implement the Approved Recommendations, including:
  - Develop business case justification, with PBRB input, if Approved Recommendations require additional exposure time beyond the required sale timing (FASTA, Section 12(b)(6)(B)).
  - Awarding sales based on FASTA's provisions.
  - Managing the closing and conveyance of properties sold by quitclaim deed to a non-Federal party.

#### **D. THIRD PARTY CONTRACTING**

This section describes the specific roles and responsibilities of the Parties regarding the acquisition of services and related activities of third party contractors to assist with implementing the Approved Recommendations.

GSA agrees to provide timely and effective contract administration in order to award and administer third party contracts necessary to implement the Approved Recommendations. GSA further agrees to that, to the maximum extent permitted by applicable acquisition regulations, policies, and subject to executing a non-disclosure agreement, the Contracting Officer will:

- Appoint a Contracting Officer's Representative (COR), if doing so is (x) consistent with regular GSA contracting processes or (y) reasonably requested by PBRB;
- Share with PBRB contract files including statements of work, awarded contracts modifications, invoices and receiving reports;
- Provide PBRB with the opportunity to review and comment on invoices prior to remitting payment;
- Include PBRB representation in any technical evaluation team;
- If requested by PBRB, coordinate progress meetings with PBRB throughout the contract period to discuss contractor performance and potential gaps in service that may limit or otherwise impact the Parties' ability to fulfill their mission under FASTA;
- Establish effective channels of communication with the COR to relay all relevant information and tasks needed to ensure the timely administration of contract progress;
- Take necessary actions, as applicable, to ensure that FASTA transactions are in compliance with FAR.
- Notwithstanding the foregoing, the Parties agree and acknowledge that the Contracting Officer shall exercise independent judgment and make decisions regarding the award and administration of all third party contracts, including the source selection plan, evaluation factors, method of contracting, modification, cancellation, or termination thereof. (Refer to Section III, Funding.)

## **V. LIMITATION ON FUNDING COMMITMENTS**

Notwithstanding any other provision of this MOA, all activities under or pursuant to this MOA are subject to the availability of funds, and no provision of this MOA shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act (31 U.S.C. § 1341).

## **VI. COMMENCEMENT/DURATION/MODIFICATION/TERMINATION**

**A. COMMENCEMENT/DURATION:** This MOA takes effect upon the last signature date of the Parties below (the Effective Date) and shall remain in effect until the earlier of (x) the



completion of all obligations of both Parties or (y) upon the termination of PBRB. This MOA may be extended by written agreement of the Parties.

**B. MODIFICATION:** This MOA may only be modified by written agreement of the Parties.

**C. TERMINATION:** Either party may terminate this MOA at any time by providing written notice to the other party at least thirty (30) days in advance of the desired termination date. In the event this MOA is terminated, neither party shall have any further obligation under the MOA. Such termination shall have no impact on GSA's custody and control over the APSMF, including the ability to charge any incurred costs against the APSMF as well as the costs associated with terminating any awarded contracts. Termination of this MOA under this Section VI.C will not impact the Parties' respective obligations per FASTA.

## **VII. KEY PERSONNEL**

The following Key Personnel are responsible for coordinating the roles and responsibilities established by this MOA:

<u>Name</u>	<u>Entity</u>	<u>Title</u>
Adam Bodner	PBRB	Executive Director
Nancy Czapek	PBRB	Senior Advisor
Kelly Keef	PBRB	Senior Advisor
Courtney Johnson	PBRB	Executive Officer
Flavio Peres	GSA RPUD	Assistant Commissioner
John Dugan	GSA RPUD	Lead Project Manager
Brian Kee	GSA RPUD	Program Budget Lead

## **VIII. DISPUTE RESOLUTION**

Should a disagreement arise between the Parties concerning the interpretation or implementation of the terms of this MOA, representatives of each Party shall make every effort to resolve the disagreement at the level of implementation before escalating for review by agency

